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SUMMARY RECORD OF THE 39th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 23 November 1998, at 10 a.m.

Chairperson: Mr. ALSTON

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6) (continued)

Initial report of Switzerland (continued) (E/1990/5/Add.33; HRI/CORE/1/Add.29; E/C.12/Q/SWI/1; in-session document with no symbol containing written replies by Switzerland to questions raised in the list of issues and Corrigendum)

1. At the invitation of the Chairperson, the members of the delegation of Switzerland resumed places at the Committee table.

2. Ms. KOCHERHANS (Switzerland), replying to questions put by Mr. Ahmed, said that the average time taken for issuance of a decision concerning asylum and refugee status was 119 days. In 80 per cent of cases a first decision was announced within 89 days. The competent authority at first instance was the Federal Office for Refugees; decisions on appeal were made by an independent commission for appeal in asylum matters. Both those organs were federal bodies. Flows of immigrants from Italy, Spain and Portugal in the 1960s and 1970s had recently given way to flows from eastern European countries such as the former Yugoslavia and Albania. The short-term residence permits granted to the first wave of immigrants on their arrival had been replaced almost automatically by long-term permits, so that those immigrants were now fully integrated into Swiss society.

3. Mr. WYSS (Switzerland), replying to questions put by Mr. Sadi and Mr. Texier on marriage and divorce, said that between 1967 and 1994 the average rate of divorce had risen from 12 per cent to 37.8 per cent of marriages contracted during the reference period. About one third of all divorce proceedings were instituted during the first five years of marriage, chiefly by the wife. Changes in religious attitudes, material wealth and the emergence of new family structures were among the factors contributing to that development. The comparatively high number of marriages between Swiss nationals and foreigners might be attributable to the fact that second-generation immigrants had now reached the age of marriage. Following the failure of an attempt by its opponents to initiate a referendum procedure, a partial revision of the Civil Code would enter into force in 1999, meeting the need for a modernized divorce law. The revised Code provided for divorce on the basis of mutual consent. While the feasibility of a simple administrative procedure had been considered, it had been decided to retain a mechanism involving a court decision, in order to avoid over-hasty recourse to divorce. A divorced couple could now request the competent court to grant joint exercise of parental authority. A similar provision existed for unmarried couples in guardianship matters. In both cases the criterion applied was the best interests of the child. The age of consent for matrimony had been harmonized at 18 years for men and women.

4. Ms. KOCHERHANS (Switzerland) said that there was currently no system of maternity insurance in Switzerland, but that very strong safeguards existed for employed pregnant women and nursing mothers. In addition to the

protection measures detailed in paragraphs 426 to 430 of the initial report (E/1990/5/Add.33), the revised Labour Law which, it was to be hoped, would be approved the following week provided that a pregnant woman employed on night work could request to be employed in the same work on the day shift. If it was not possible to grant her request, she would be entitled to be exempted from work throughout her pregnancy and to receive 80 per cent of her salary.

5. Ms. IMESCH (Switzerland) said the impression that maternity was treated as a category of sickness for insurance purposes was an erroneous one, arising from the fact that a 1996 revision of the 1911 Sickness Insurance Law had extended cover to persons not otherwise insured in the three entirely separate contingencies of sickness, maternity leave and accidents at work. As daily insurance would remain optional under the proposed new Sickness Insurance Law, so that there would be no automatic right to cash maternity benefits, the Government had once again attempted to implement its constitutional mandate by tabling a draft law on maternity insurance, while confining itself to the question of cash benefits, since maternity care was already satisfactorily regulated by the Sickness Insurance Law. Despite some opposition encountered in the two Chambers, it was to be expected that that draft law would shortly be adopted. It was worth noting, however, that the issue might yet be forced to a referendum.

6. The first Swiss report on the question of ill-treatment of children within the family, published in 1992, had revealed that the phenomenon was widespread, and that corporal punishment was commonly inflicted on infants. Following a 1995 opinion of the Federal Council on the report, the Centre for Family Questions, a division of the Federal Office of Social Insurance, would assume coordinating functions in the area of child protection, responsibility for which was currently shared among various departments of the administration. Projects launched since 1996 included training programmes and the establishment of a computerized archive on child abuse. Theoretical research on a global concept of prevention and on exploitation of minors in Switzerland was also being financed. That study would have important practical as well as theoretical applications.

7. Mr. RIEDEL asked what the authorities of the Confederation could do to ensure that equal standards were applied in all cantons in matters of protection of children against abuse.

8. M. WYSS (Switzerland) said that the federal administration had various mechanisms at its disposal for such purposes, but availed itself of them only with reluctance. As no specific measures existed to combat ill-treatment of children, the authorities had to rely on general measures and instruments, ranging from simple reminders to legal remedies. The core idea underlying a new set of legislative proposals aimed at combating sexual abuse of children was to extend the statutory limitation for such offences by computing it from the date on which the victim attained 18 years of age. The proposals also provided for specific measures to be taken if the judicial organs of the cantons and communes failed to take appropriate action. Information on the outcome of and follow-up to those proposals would be included in Switzerland's second periodic report to the Committee.

9. Mr. KOUZNETSOV asked whether it was possible for the Federal Government to intervene in cantonal affairs if it considered that the obligations binding on the Confederation in human rights matters were being violated at cantonal level. If so, what form would such intervention take?

10. Mr. WYSS (Switzerland) confirmed that the Federal Constitution provided for such intervention. The form it took would depend on what action the canton had taken or neglected to take, and might entail judicial procedures at various levels. However, given that the cantons were legally bound to comply with judgements of the Federal Court and the European Court of Human Rights, the question of forcible intervention by the Federal Government in Human Rights matters had never arisen.

11. Ms. SCHULZ (Switzerland), replying to questions concerning the structures available and measures proposed to assist women victims of sexual violence and verbal abuse, said that data on violence against women were gathered by the Federal Office of Statistics in the context of health surveys, and also by national research programmes. A study was being conducted on the question, from which it could be seen that the incidence of domestic violence were the same among Swiss citizens as among foreigners. Many of the perpetrators had themselves been victims of violence in childhood. Violence was more likely to occur in families where the spouses enjoyed unequal financial, social or cultural resources: for example, a foreign woman married to a Swiss national, isolated from her own family and ignorant of Swiss society, was more vulnerable to domestic violence. Cases of domestic violence were dealt with in the criminal and civil courts, and there was no ombudsman to deal with such problems. The cantonal police had units specially trained to deal with the problem, and victims were legally entitled to be heard exclusively by women police officers and women judges.

12. Ms. IMESCH (Switzerland) said that a 1992 study had shown that single-parent families constituted a disproportionately high percentage of the poor population, and were poorer than poor two-parent families. However, as single-parent families constituted a relatively small proportion (3.6 per cent) of the total population, they accounted for only about 7 per cent of the poor population. Another study, conducted in 1996, had shown that the problems encountered by such families were chiefly of a personal and relational rather than an economic nature. Economic difficulties were real enough, but tended to disappear once the mother had re-entered the labour market.

13. No special assistance was accorded to single-parent families as such, but single parents benefited from the assistance accorded to parents and young people in general, such as the services provided by the cantons and State-financed programmes. In addition, aid was provided to single-parent families in application of the legislation covering the population as a whole by field of insurance rather than by category of person insured. Although cantonal child allowances were tied to the exercise of a gainful activity, so that single parents working part-time were entitled only to partial allowances, some cantons paid full allowances to single parents who worked part-time in order to raise a family. The cantons were also obliged to reduce sickness insurance premiums for insured persons on low incomes, including single-parent families. Eleven cantons had introduced income-related

benefits. Single-parent families also benefited from general poverty alleviation measures. The demand for child-minding services exceeded the supply, except in the Ticino canton so priority was given to working parents.

14. Ms. KORNICKER UHLMANN (Switzerland), replying to the questions on international adoptions, said that in recent years their number had varied from 500 to 750 per year. Swiss law was applied, and the approval of such an adoption was the responsibility of the authorities in the foster parents' place of domicile. The Civil Code laid down three main conditions. Firstly, the prospective foster parents had to provide satisfactory care and education for a probationary period of two years. Secondly, the consent of the child was required. Thirdly, the relevant Federal Council Circular of 1988 stated that an international adoption could proceed only if attempts to raise the child in his country of origin, either in his own family or through fostering or adoption, had failed.

15. Where there were obstacles to the recognition in Switzerland of the adoption of a foreign child, or the adoption had not been approved in the country of origin, placement was subject to Swiss federal laws. According to the regulations, the child remained under the supervision of the appropriate cantonal authority, which was empowered to approve the adoption once it had determined that there were no legal barriers and that the general circumstances were propitious. The consent of the authorities in the State of origin was also required. The prospective foster parents had to present a medical report on the child, a report on his previous life in his country of origin, and a document attesting to the consent of his natural parents or a statement by the authorities in the country of origin explaining why such consent could not be obtained.

16. The child remained a foreigner until he was adopted, and thus had to be issued with a residence permit in accordance with the Order restricting the number of aliens and the Civil Code. Although the former provided that a residence permit could not be renewed after two attempts at placement had failed, in practice authorization to stay was renewed annually. Such a situation could last for up to five years, after which the child was freed from federal control. To date, no child in such circumstances had been forced to return to his own country.

17. Finally, Switzerland was preparing to ratify the 1993 Hague Convention relating to the protection of children involved in international adoptions. Consultations had already been held at cantonal level with a view to incorporating the provisions of the convention into Swiss law and practice. In addition, the Government intended to amend the Civil Code in order to establish a central federal authority concerned with international adoptions, and to reduce the probation period from two years to one.

Article 11

18. Mr. WYSS (Switzerland), replying to the questions which had been put concerning forced evictions, said that although there were no specific legal provisions relating to the conditions under which a tenant might rightfully claim to remain in his accommodation once notice to quit had been served, the Federal Tribunal had clearly stated that such evictions were subject to a

"proportionality test", which required the evicting authority to take account of humanitarian considerations and to grant a temporary reprieve if a tenant had nowhere else to go. Such an extension was not deemed to be a renewal of the lease. In addition, the Code of Obligations contained several provisions designed to prevent landlords abusing their power to terminate contracts. Eviction procedures were regulated by cantonal law, and a court order was normally required.

19. Ms. IMESCH (Switzerland), replying to questions on the poverty threshold and measures taken to combat poverty, said that no official threshold had been set at either federal or cantonal level. In practice, however, the income limits set by institutions were used as the indicators of minimum levels.

20. The first main indicator was supplementary benefits, which were paid to individuals receiving a disability benefit, pension or survivor's benefit if their income was deemed insufficient according to a standard means test. Although the 26 cantons were not required to pay supplementary benefit under federal law, they had all introduced legislation to that effect. Supplementary benefit was paid on a non-contributory basis in accordance with personal and economic circumstances. It could sometimes be paid to those not in receipt of the normal social welfare benefits. The amount received was based on the difference between an individual's expenses and his income, an exhaustive list of factors being taken into account.

21. Supplementary benefit was also available to elderly persons already receiving State benefits, in order to cover the cost of health care, health insurance, transport, wheelchairs, etc.

22. Other organizations, notably the Swiss Conference of Institutes for Social Action and the cantons themselves, applied criteria for determining the level of poverty of persons not in receipt of welfare benefits.

23. Outside the benefit's system, the principal means of tackling poverty in Switzerland was the system of public assistance, which applied only to those not covered by social security or whose income was deemed insufficient. All the cantons had legislation providing for social assistance more generous in some cases than in others. Implementation was the concern of the communes, which also had the right to pass regulations. The Swiss Conference of Institutes for Social Action had formulated recommendations on social assistance which, although not binding, were universally respected at both cantonal and communal level.

24. Ms. KOCHERHANS (Switzerland) said that unfortunately the Government did not compile data on homeless persons. Only a small number of private charities were involved in activities that addressed the problem.

25. Mr. TEXIER asked what happened in Switzerland with squatters.

26. Ms. KOCHERHANS (Switzerland) replied that the measures applied to squatters varied considerably depending on such factors as whether they left the building in a "clean" or unusable state, whether the building was publicly or privately owned, and the relationship between squatter and owner. In some cases, a "contract of trust" was drawn up whereby the squatters undertook to

pay the costs of utilities used over a fixed period, such as the time taken to refurbish the building. Negotiation was the preferred means of resolving problems, although in some cases the police had to be called in.

Article 12

27. Mr. BUECHI (Switzerland) said that the Government had very little information available about the mentally ill in the community. It readily admitted that problems had occurred in respect of forced treatment and medical malpractice. Formal responsibility lay with the cantonal governments, but the real problem was that society as a whole sought refuge in the "out of sight, out of mind" attitude. The federal Government lacked the means to take appropriate action, and he warmly commended those NGOs which were involved with the mentally ill.

28. Mr. RIEDEL said he welcomed the delegation's admission that a great deal more might be done to address the problems of the mentally ill. The Committee would, however, like to know what the Government's intentions were in terms of its promotional obligations, action plans, and proposed legislation.

29. Mr. BUECHI (Switzerland) said that the only initiative the federal Government had taken to date was a new research programme aimed at obtaining information on young people with mental health problems.

30. Mr. WYSS (Switzerland) said that forced medical treatment was subject to restrictive legislation, based mainly on the case law of the European Court of Human Rights at Strasbourg. A convincing case had to be made that it was essential for the patient's physical and mental health, and all orders authorizing such treatment were subject to judicial review. After reaffirming the paramount importance of ensuring that human dignity was maintained in all cases of forced treatment, the Federal Tribunal had recently declared unconstitutional a cantonal order requiring an elderly woman to present herself at a hospital for medical examination.

31. Switzerland was considering ratifying the Council of Europe's framework convention on biomedicine, which contained a number of provisions aimed at protecting the fundamental rights and freedoms of persons undergoing medical treatment in a wide range of circumstances.

32. Mr. BUECHI (Switzerland), replying to questions about measures to deal with drug addiction in Switzerland, said that in 1991 the Lausanne University Institute of Social and Preventive Medicine had been given the task of evaluating federal policy on a regular basis. In response to its recommendations, the Government had introduced new measures to deal with an increase in the number of outpatients presenting with drug-related symptoms, with the problems of young women involved in the drug scene, and with a whole range of issues relating to the quality of the overall treatment programme for drug addicts. Recently, the Lausanne Institute had recommended that the Government should not try to diversify its facilities and treatment programme any further without undertaking significant additional research.

33. The Government had also set up projects in every major city to tackle the problems of drug-using prostitutes. Likewise, the problems of drug users in prison, including those with AIDS, were being addressed in response to the Institute's recommendations.

34. Mr. RIEDEL asked whether it was the practice in Swiss prisons for prisoners with HIV to be openly identified.

35. Mr. BUECHI (Switzerland) said that to his knowledge that was not the case.

36. In reply to Mr. Wimer's question on the extent of the liberalization of drug policy in Switzerland, he said that a fundamental shift had occurred over an extended period. The process had started in 1991, when a conference convened by the federal Government and attended by representatives of all interested groups and levels of government had concluded that the existing treatment regime needed to be changed. To its three existing pillars - namely prevention, treatment and repression - there had accordingly been added a fourth which had come to be known as "harm reduction". At first, that had meant the provision of clean needles and "low-threshold" treatment rooms. By 1996, it had come to mean the prescribing of heroin for some of Switzerland's 15,000 drug users for whom methadone treatment had proved unsuitable. Seen from within, the new policy represented the use of science to deal with a public health problem; however, that was not how some outsiders perceived it.

37. Mr. SADI asked whether there was any evidence to suggest that Switzerland's enlightened drug policy had undermined the activities of drug dealers and traffickers.

38. Mr. BUECHI (Switzerland) said that that question related to the "repression" pillar of the overall policy. Over the past year, 50 additional police staff had been taken on in connection with drug dealing. Overall, 10 times more funding was devoted to policing than to treatment. Furthermore, Switzerland had recently introduced new laws to tackle money laundering, which was an important aspect of the drug problem.

39. Ms. IMESCH (Switzerland), in further reply to questions, said that the new Sickness Insurance Act, which had come into force on 1 January 1996, provided health, accident and maternity cover for all, under mandatory insurance guaranteeing a basic level of medical and pharmaceutical care. The insurance operated on the basis of individual premiums that were not linked to income. The insured person was entitled to the benefits provided by the scheme from the moment of joining an insurance fund. No time limit was placed on entitlements to in-patient and out-patient care. Hospital costs for a stay in a public ward were fully covered, as were certain forms of care provided in the home under the SPITEX programme. The insurance scheme gave everyone living in Switzerland access to quality medical and pharmaceutical care. The cost of health care had represented approximately 9.6 per cent of GDP in 1994.

40. There were two parts to the insurance scheme, the first providing health cover, which was mandatory, and the second loss-of-earnings cover, which was optional. The health cover component was based on the principle of

distributing the burden on a mutualistic basis, the costs being met from premiums paid by insured persons, charges paid by those receiving care, and subsidies provided by the public authorities. Each insurance fund determined the premium it charged, which was the same for each member of the fund, on the basis of the costs it expected to cover. The price of premiums was regulated by competition among the insurance funds. Persons receiving health care contributed by paying the first Sw F 250 of their health-care costs in any one year, together with 10 per cent of any costs above that threshold level up to an annual ceiling, set at Sw F 600 for 1998. The total amount payable in 1998 was thus Sw F 850. For children there was no threshold cost and the annual ceiling was half the adult level. In the case of a number of children from a single family insured with the same insurance fund, the threshold and ceiling were the same as for an adult.

41. In 1996, 11.5 per cent of total health-care costs had been paid by insured persons receiving care, while 76 per cent had been met from the premiums paid to the insurance funds. The balance came from public subsidies. In the past those subsidies had been determined on the basis of the number of persons insured with a given fund, but the system was now radically different, with the Confederation or canton setting aside a given sum to be made available to the sickness insurance funds for the purpose of reducing the premiums payable by persons in straitened circumstances in order to bring health insurance within their reach. The sum earmarked for that purpose in 1998 was Sw F 2,050 million, each canton being expected to add a minimum contribution. The share of the subsidy received by each canton was determined on the basis of its financial capacities, population and premium index.

42. The federal subsidy system had not worked as well as could have been expected, since some cantons had not used all the funds made available to them. The first review of the Sickness Insurance Act, which was already under way, should provide corrective action to ensure that people were better informed of their rights with regard to reduced premiums, that premium reductions were based on the latest tax data, and that reductions were determined before the premium was due for payment.

43. Mr. SADI observed that since the insurance funds were private companies they would expect to make a profit in order to stay in business. How was that taken into account in the calculation of public subsidies? Did those subsidies come from general tax revenue?

44. Ms. IMESCH (Switzerland) said that the health insurance funds were not expected to operate on a profit-making basis but on a cost-efficient basis and on the principle of mutualism. They were expected to calculate their premiums according to the size of the reserve fund needed to cover their risks. The subsidies were made available to the cantons from the federal budget, but the cantons also had to provide a supplement from their own funds. If the tax return completed by any individual showed that payment of the insurance premium would be a burden, that person was issued with a paper giving entitlement to a subsidy.

45. Ms. JIMÉNEZ BUTRAGUEÑO asked whether a retired person was expected to pay the same premium as a person in gainful employment, who was likely to have a much higher income. What level of care was available for older persons, for example did they have access to regular medical examination?

46. Ms. IMESCH said the amount of the premium set by an insurance fund was the same for all its contributors, regardless of whether they were at work or retired. It was open to any insured person to shop around for the insurance fund that charged the lowest premiums. There was no restriction on a person's changing insurance funds at will, in order to encourage free competition between insurers. However, if payment of a premium or health-care charges represented too great a financial burden for an individual, help would be available in the form of subsidies, supplementary benefits or social assistance.

47. The level of health care afforded to older persons in Switzerland was generally high. In addition to a large number of hospitals and well-trained medical and paramedical staff, a system of care for older persons, much of which was reimbursed by health insurance, was in place to help them remain in their own homes if they so wished. Old people's homes were also available to those who needed them.

48. Mr. WYSS (Switzerland) said that under the current Penal Code abortion was prohibited unless two medical experts had agreed that continuation of the pregnancy entailed serious medical risk. However, there had been no convictions for breach of that provision since 1988. The number of abortions carried out in public health institutions had declined from 17,000 in 1966 to some 12,000 in 1994. The number of illegal abortions had decreased from about 45,000 to none.

49. In view of recent changes in public attitudes to abortion, a reform of the law was in prospect. A parliamentary commission had put forward a majority proposal to legalize abortions carried out within 14 weeks of conception. The requirement for a second medical opinion would not be continued, nor would medical consultation be mandatory. A minority in the commission had been in favour of complete decriminalization of abortion. The proposals had been considered by the public at large and were currently before the Federal Parliament, the 14-week procedure having already been approved by one chamber, the National Council. The final outcome could be dealt with in Switzerland's next report to the Committee.

50. Mr. BUECHI (Switzerland) said that abortion was no longer a public health problem in Switzerland. Furthermore, as a result of the provision of sex education in schools and the efforts of the Stop AIDS campaign, women and girls were well informed on ways to prevent unwanted pregnancies. However, it was hoped to continue to reduce the current abortion figures by paying greater attention to women's health in general.

51. Mr. WIMER ZAMBRANO, noting the evidence for the existence of paedophile rings in Europe and the impact of that phenomenon in developing countries, asked what measures were being taken in Switzerland to prevent child sex abuse and prosecute those who engaged in it.

52. Mr. ADEKUOYE asked what was meant by the term "special waste" used in paragraph 569 of the report. Where such waste was exported, what was its destination? Was any sent to developing countries, in particular in Africa?

53. Mr. ELMIGER (Switzerland) said that an inquiry would be made into the matter and a reply sent later to the Committee in writing.

54. Mr. BUECHI (Switzerland) said a member of staff of the Federal Police Office was engaged full-time in looking into the problem of child sex abuse, including identification of paedophile Internet sites in Switzerland. In addition, it was now possible to bring to justice in Switzerland persons accused of child sex abuse elsewhere.

Articles 13 and 14: The right to education

55. Mr. RIEDEL said that a bill advocating an increase in university fees had apparently been before the Federal Parliament in 1997 but had later been withdrawn in the face of adverse comment, including representations from non-governmental organizations and a letter from the Chairperson of the Committee on Economic, Social and Cultural Rights. Were there any other plans for legislation on those lines? Further, although subparagraphs (a), (b) and (c) of article 13.2 of the Covenant each carried different wording, the reference to "every appropriate means" should not be regarded as an open invitation to charge school fees. The overall intent of the article, which the Committee had consistently endorsed, was to promote the progressive introduction of free education at all three levels of education. Was that also the aim of Swiss educational policy? Could he take it that no retrogressive measures were in view? Were the federal authorities cognizant of the binding nature of their undertaking in that connection under international law, particularly in view of the indication in the third paragraph of written reply 38.2 to the list of issues that little financial assistance, for example in the way of grants and loans, was available to students in higher education?

56. Written reply 36.3 to the list of issues admitted to some penalization of girls in the education system, particularly with respect to textbooks. What measures had the federal authorities in mind to remedy that situation - which it clearly did not welcome - and make cantonal and local authorities aware of their international obligations in that respect?

57. Mr. CEVILLE, referring to the statement in paragraph 617 of the report that the Federal Constitution embodied no general right to education, noted that a proposal to rectify that omission had failed to come into effect in the past because of its rejection by the cantons in a 1973 referendum despite acceptance by 52.8 per cent of the total population voting. He wondered whether the Federal Government was currently considering any further steps to ensure recognition of the right to education in the Federal Constitution.

58. Mr. GRISSA asked whether students attending a university in another canton because their own canton did not have one enjoyed the same financial treatment as students from cantons with a university. Did they have to pay higher fees or did their own canton make a financial contribution to the university budget of the other canton?

59. Mr. CEAUSU said that at the time of the referendum mentioned by Mr. Ceville Switzerland had not yet acceded to the Covenant. If the Federal Government were to relaunch that initiative now, would it still have to refer the matter to the cantons and the general population, or could it have recourse to ordinary legislative procedures instead, since a majority of the people had in 1973 voted for a constitutional amendment in favour of what had since become an obligation assumed under an international treaty?

60. Mr. ADEKUOYE asked what were the real costs to a family of having a child in the different levels of education and what form those costs took. Which were the cantons where school supplies and equipment were not made available to primary schoolchildren free of charge? He understood that one of the reasons for seeking to limit the number of students entering medical school had been the substantial increase in the health budget resulting from the rise in the numbers of doctors graduating from universities. He asked for an explanation, since it was more generally the case that an increase in the numbers entering the medical profession would tend to depress earnings in the profession and lower health costs.

61. Mr. THAPALIA said it had been recognized by the Federal Statistical Office that children who were recent immigrants had difficulty in adjusting to school in Switzerland. Teenagers were particularly disadvantaged. What was being done to remedy the situation? He was aware of only two pilot projects currently under way to try to provide appropriate education for such children. Secondly, he asked what measures were envisaged by the Swiss Government in the context of the United Nations Decade for Human Rights Education.

62. Mr. SADI said that, although there had been hopes that the Federal Tribunal could by its case law remedy any gaps in the legislation with respect to economic, social and cultural rights, it had recently given a ruling that appeared to send a negative signal, namely that article 13.2 of the Covenant was insufficiently precise to be directly applicable but could only be construed as an instruction to the legislature. The Committee was, however, of the opposite view and considered the provision to be directly applicable. Another ruling had indicated that the progressive introduction of free education was not a necessary condition for making higher education more accessible. What other routes to that end were being envisaged by the Swiss Government? Had the number of persons applying for higher education increased or decreased as a result of that ruling?

63. Mr. LUISONI (Switzerland) said he would endeavour to answer the questions on the right to education to the best of his ability, particularly since many of the issues raised were also of concern to the Government and population of Switzerland. More detailed written replies could be provided to the Committee in due course, if necessary.

64. He stressed that the bill to reintroduce fees for secondary II education, alluded to by Mr. Riedel, had been proposed at cantonal level (in the Canton of Zurich) and not at Federal level. In any case, the Canton of Zurich had not approved the bill. Moreover, in other cantons draft legislation along similar lines had been rejected by a popular vote. It was possible, of course, that yet other cantons might propose such legislation and that the considerable publicity which had been created about the issue through

the ruling of the Federal Tribunal on article 13 of the Covenant, the letter by the Chairperson of the Committee, and official information provided by the Federal Government to the cantons on the subject might well serve as additional fodder for proponents of the idea.

65. Although the Federal Tribunal had ruled that there was no case for the direct applicability of article 13.2 of the Covenant, since it was construed as an instruction to the legislature, it did not follow that the Swiss Government or the Federal Tribunal underestimated the importance of the instrument. Nor did he view the ruling as a negative signal; and the debate was still open. It was a question of interpretation: the Federal Tribunal had not ruled that the provision was imprecise, but rather that it was not sufficiently precise to conclude that charging no fees was the only means of ensuring universal access to secondary education. Current research in the field showed that other means, such as reimbursable student loans, could be just as effective. To his knowledge the number of students applying for higher education had not been affected by the ruling of the Federal Tribunal.

66. There were different schools of thought on what was meant by the term "social". A referendum had been held recently in the Canton of Geneva concerning a government proposal to reintroduce fees for educational services other than teaching, namely leisure and cultural activities and canteen facilities. In the end the majority had ruled that it was "social", in other words fairer, for those able to pay for such services to do so and for the underprivileged to be given additional support rather than for everyone to be entitled to such services free of charge, irrespective of their financial circumstances.

67. Admittedly Federal Government funds available for student grants and loans were relatively low. At present such matters were governed by an arrangement between the Federal Government and the cantons, whereby the former allocated funds to the latter. There was also an inter-cantonal agreement to ensure harmonization. Much work needed to be done in the area and the federal system certainly did little to help the situation. However, some steps had been taken and progress was being made.

68. Virtually nothing could be done at Federal level to combat discrimination against girls, especially in school textbooks, apart from alerting the cantonal and local authorities, authors and teachers to the need to avoid sexist stereotypes. Considerable progress had been made in the last 20 years but the Federal Government could not have full control over the situation since not all textbooks were produced in Switzerland, many being supplied by major foreign publishers.

69. Regarding the failure of the Federal Constitution to recognize the general right to education, it must be realized that in Switzerland amendments to the Federal Constitution required the approval of the majority of the population and also of the cantons. In the referendum held in 1973 the proposal to incorporate the right to education in the Federal Constitution had been rejected because, although 53 per cent of the population had voted in its favour, it had not been approved in a majority of the cantons. To his knowledge there were no plans at present for any further amendments to the Constitution along those lines. Since the early 1900s the Federal

Constitution had provided for compulsory primary education and, in practice, that right was extended to secondary and in some cases higher education, although it was not guaranteed by the Federal Constitution.

70. All Swiss students paid fees for university education irrespective of their canton of origin. Fees currently stood at around 600 Swiss francs per semester, which was considered to be a reasonable amount by the Swiss Government and university authorities. Such modest fees could not be regarded as discriminatory. A number of different cantonal, communal and private schemes for providing financial assistance to students were available. The cantons also made a contribution towards the student fees. The inter-cantonal agreement governing the financing of universities had been revised the previous year and as a result individual fees had been increased. Students from cantons without universities were not penalized in any way and received the same treatment as students from university cantons.

71. It was difficult to say what were the real costs of education for a family, since it depended on which items were considered. Should teaching costs only be included, or stationery, equipment and clothing also? Perhaps some information might be available from consumer organizations that had conducted surveys on the subject. At Swiss primary schools, textbooks were sometimes distributed free of charge or lent for a modest fee to cover maintenance and prevent misuse.

72. There were valid arguments for and against restricting the number of entrants to certain university faculties such as medicine. It was a question of striking a balance between the right to education on the one hand and financial constraints and the need to ensure good quality teaching on the other. At some universities, including Geneva, where there was no restriction on the number of students enrolling for medicine, some 40 to 60 per cent were eliminated along the way because they dropped out or failed periodic examinations. As for the reference in the report to the effects on the health-care budget of the increasing number of students entering medical school, it was well known that the more doctors were available, the more likely people were to go for treatment, resulting in greater health costs but not necessarily a higher income for the doctors concerned.

73. With regard to concerns expressed about problems facing the children of immigrants in education, he said that although some studies indicated that children of foreign origin were less successful at school and less likely to go on to higher education than Swiss children, other studies suggested the contrary. Perhaps one reason for the perceived disparity was that the spectrum of immigration had broadened to include, for example, the former Yugoslavia, Turkey and African countries, and thus the cultural differences between immigrants and the Swiss were now far more marked than in the past. Additional measures were therefore required to ensure proper integration. Efforts were under way to secure support from the Confederation and cantons to develop appropriate integration policies and to provide an inter-cultural education, from as early as the crucial pre-school age. Some useful teaching material for that purpose had recently been introduced in the French-speaking cantons and was now being translated for use in the Italian and German-speaking cantons.

Article 15: Right to participate in cultural life

74. Mr. WIMER ZAMBRANO expressed concern about the future of the Romansch language, which apparently was now spoken by only a few hundred people. Perhaps the Swiss Government ought to review its general policy towards the language with a view to preventing its disappearance and encouraging studies and specialization on the subject.

75. Mr. MARCHÁN ROMERO wondered why there was no reference in the report to the Yenisch people. What was the size and status of that ethnic group and what steps was the Government taking to ensure its integration in society while preserving its cultural traditions and identity?

76. He sought clarification regarding the statements in paragraphs 743 and 744 of the report to the effect that the Federal Constitution contained no provision relating to culture, which was considered a cantonal responsibility. In particular, he inquired why efforts to incorporate such a provision in the Constitution had twice been rejected by popular vote.

77. Mrs. PEYRO (Switzerland) said there were currently about 5,000 people who identified themselves as Yenisch, while the total population of the travelling people in Switzerland stood at around 25,000. Travelling people had suffered problems and even persecution in the past, but in recent years their relations with the Swiss authorities had improved through greater understanding and cooperation. A number of policy errors had been committed vis-à-vis the children of travelling people, such as forced separation from their parents and forced settlement. The President of the Confederation and the President of the Foundation Pro Juventute, which prior to 1972 had been responsible for assistance programmes to the children of travelling people, had issued a public apology to the persons concerned, who had also been provided with adequate compensation.

78. The travelling people were Swiss citizens and as such entitled to exercise the basic rights guaranteed by the Constitution, although their lifestyle posed certain obstacles, particularly where schooling and social benefits were concerned. A number of measures had been undertaken recently to ensure their full enjoyment of such rights. Firstly, in May 1997 a foundation had been set up to ensure the future of the travelling people in Switzerland and seek solutions to their particular problems, in cooperation with representatives of the competent local, cantonal and federal authorities. Secondly, the Federal Anti-Racism Commission, established in August 1995 with a very broad mandate, had devoted considerable attention in the first two years of its activity to the situation of travelling people in Switzerland. Thirdly, Switzerland had recently ratified the Council of Europe's framework Convention on the protection of national minorities. Since the Convention did not provide a definition of a national minority, the Swiss Government had made a declaration on the subject when ratifying the instrument. The definition agreed upon covered the minority language groups in Switzerland together with other communities, including those of Jewish origin and the travelling people.

79. There were as many as 6,000 Romansch-speaking people living in the canton of Graubünden. According to recent figures provided by the Federal Statistical Office, about half of the Romansch community spoke the language at home. There was a keen desire to keep the language alive. Newspapers were published in Romansch thanks to financial support from the Confederation. Furthermore, as indicated in paragraphs 39 and 40 of the written replies, Romansch was now considered as an official national language in Switzerland, so the Constitution and certain laws and treaties would be published in that language in future.

80. Mr. ELMIGER (Switzerland) said that a written reply to Mr. Marchán Romero's remaining question concerning cultural rights would be forwarded to the Committee in due course.

81. The CHAIRPERSON expressed appreciation of the high-quality delegation sent by the Swiss Government and the seriousness with which it had tackled the dialogue. He paid special tribute to the Swiss NGOs for their invaluable input to the Committee; it was a credit to the Swiss people and testified to the good working relations between the NGOs and the Swiss Government.

82. Mr. ELMIGER (Switzerland) thanked the Committee for a very constructive dialogue in which the contribution of the non-governmental community had undoubtedly played a vital role. He assured members of the Committee that their recommendations and comments would be conveyed to the highest authorities in Switzerland and that the second periodic report would be drafted bearing them in mind.

The meeting rose at 1 p.m.